

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION) MDL No. 2804
OPIATE LITIGATION)
THIS DOCUMENT RELATES TO:) Case No. 1:17-md-2804
Track One Cases) Judge Dan A. Polster
)

**DECLARATION IN SUPPORT OF PHARMACY DEFENDANTS MOTION
FOR SUMMARY JUDGEMENT BASED ON THE STATUTES OF LIMITATIONS**

Pursuant to 28 U.S.C. § 1746, I, Joshua A. Kobrin, hereby declare as follows:

1. I am a partner at the office of Marcus & Shapira, LLP, counsel for Giant Eagle, Inc. (“Giant Eagle”) in the above-captioned cases.
2. I submit this Declaration on behalf of Giant Eagle, of which Defendant HBC Service Company is a division, in support of Pharmacy Defendants’ Motion for Summary Judgment based on Statutes of Limitations and for the purpose of transmitting to the Court true and correct copies of the documents attached hereto.
3. Attached to this Declaration as Exhibit 1 is a copy of excerpts from the Amended Expert Report of Sandra Kinsey, which Giant Eagle served on Plaintiffs on June 3, 2019.
4. Attached to this Declaration as Exhibit 2 is a print-out from a State of Ohio website that contains accurate information regarding HBC Service Company’s license with the Ohio Board of Pharmacy. This document was obtained from the publicly available Ohio license look-up website, https://elicense.ohio.gov/OH_VerifyLicense.
5. Attached to this Declaration as Exhibit 3 is a print-out from a State of Ohio website that contains accurate information regarding Giant Eagle Rx Distribution Center’s license with the

Ohio Board of Pharmacy. This document was obtained from the publicly available Ohio license look-up website, https://elicense.ohio.gov/OH_VerifyLicense.

I have read the above affidavit consisting of five (5) paragraphs declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

June 17, 2019

Date

s/Joshua A. Kobrin

Joshua A. Kobrin

EXHIBIT 1

Confidential - Subject to Protective Order

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE NATIONAL PRESCRIPTION
OPIOID LITIGATION**

**CITY OF CLEVELAND OHIO and
THE STATE OF OHIO EX REL. ET AL**

Plaintiffs,

v.

PURDUE PHARMA L.P., ET AL

Defendants.

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

AMENDED EXPERT REPORT OF SANDRA K.B. KINSEY, R.Ph, MBA.

B. Giant Eagle Pharmacy

52. Giant Eagle owns and operates 227 pharmacies in five states: Pennsylvania, Ohio, West Virginia, Maryland and Indiana. Of the 227 pharmacies, 27 pharmacies are in Cuyahoga County and 13 pharmacies in Summit County. Giant Eagle's pharmacy business is comprehensive and includes a well-developed specialty pharmacy operation for patients with complex therapy needs, along with an extensive prescription delivery program and a dedicated pharmacy mobile application to drive awareness, therapy compliance and patient education.

53. Giant Eagle Pharmacy experienced rapid growth beginning in 2008 and peaking in 2012 after new store growth slowed. Consistent with the decline in new construction, the pharmacy business began experiencing a decrease in annual prescription volume, compounded by 90-day fills, mandatory mail order and insurance exclusivity that affected many other pharmacy organizations.

C. Customer Demographics in Cuyahoga County and Summit County

54. In 2017, Cuyahoga County, OH had a population of 1.25M people with a median age of 40 and a median household income of approximately \$47,000, which is lower than the national average. The population is 59% Caucasian, 29% Black or African American, and 6% Hispanic or Latino.³⁶

55. The largest industry in Cuyahoga County is health care and social assistance. Registered nurses, health technologists and health technicians are among the most common jobs held by residents. In addition, Cuyahoga County has an unusually high number of physicians and surgeons compared to other counties.³⁷ Much of this is due to the abundance of health care offerings, including the renowned Cleveland Clinic Health System and University Hospitals

³⁶ <https://datausa.io/profile/geo/cuyahoga-county-oh/> (last accessed May 3, 2019).

³⁷ <https://datausa.io/profile/geo/cuyahoga-county-oh/#economy> (last accessed May 3, 2019).

drug distribution. To become VAWD-accredited, facilities must undergo a criteria of compliance review, which includes a rigorous inspection of the operating policies and procedures, licensure verification, a survey of the facility's operations, and screening through the NABP Clearinghouse. According to NABP, "VAWD accreditation helps ensure that the wholesale distribution facility operates legitimately, is licensed in good standing, and is employing security and best practices for safely distributing prescriptions drugs", which helps protect the public from drugs that have been contaminated, diverted, or counterfeited.⁴⁶

69. After substantial investment in time and resources, VAWD accreditation efforts were suspended for HBC due to the imminent closure of the facility. The work was redirected to GERx and accreditation achieved.

1. Market Share of Prescription Opioids Distributed by HBC/GERx

70. HBC distributed only Schedule III prescription opioids, solely to Giant Eagle retail pharmacies, and only for a short duration within the relevant time period. HBC was licensed to distribute Legend drugs and Schedule III through V controlled substances. The company distributed hydrocodone combination products (HCPs) between November 12, 2009, and September 30, 2014, prior to the DEA action to reclassify HCPs from Schedule III to the more-restrictive Schedule II in October of 2014.

71. GERx is licensed for and distributes all drugs for retail sale, including Schedule II prescription opioids, solely to Giant Eagle retail pharmacies, beginning in March 2016 through current day.

⁴⁶ VAWD: Contributing to a Safe Wholesale Distribution and Supply (2019). National Association of Boards of Pharmacy, available at <https://nabp.pharmacy/programs/vawd/> (last accessed May 5, 2019).

EXHIBIT 2



License Look Up

6/14/2019 11:58 AM

HBC SERVICE COMPANY, AN OPERATING

Status	Inactive
Sub-Status	Closed
Board	Board of Pharmacy
License Type	Wholesaler - Category 3
License Number	011702550
License Issue Date	05/15/2007
License Expiration Date	06/30/2016
License Effective Date	06/05/2015
Street Address	DIVISION OF GIANT EAGLE, INC. 601 MEADOWLANDS BLVD.
City	WASHINGTON
State	PA
Zipcode	15301
Country	United States
Board Action	No

Supervised By:

Supervisor Name	Supervisor License	Status	Start Date	End Date
		Active	Wed Jul 08 00:00:00 GMT 2015	

Current date & time: **6/14/2019 11:58 AM**

Disclaimer: The Joint Commission and NCQA consider on-line status information as fulfilling the primary source verification requirement for verification of licensure in compliance with their respective credentialing standards.

EXHIBIT 3



License Look Up

6/14/2019 2:21 PM

GIANT EAGLE RX DISTRIBUTION CENTER

Status	Active
Sub-Status	
Board	Board of Pharmacy
License Type	Wholesaler - Category 3
License Number	012587000
License Issue Date	02/12/2016
License Expiration Date	06/30/2021
License Effective Date	07/01/2019
Street Address	2500 LOVI ROAD
City	FREEDOM
State	PA
Zipcode	15042
Country	United States
Board Action	Yes

Supervised By:

Supervisor Name	Supervisor License	Status	Start Date	End Date
		Active		

Current date & time: **6/14/2019 2:21 PM**

Disclaimer: The Joint Commission and NCQA consider on-line status information as fulfilling the primary source verification requirement for verification of licensure in compliance with their respective credentialing standards.